

Message Text

PAGE 01 BUCAR 05392 01 OF 02 221401Z

43

ACTION EB-07

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FM AMEMBASSY BUCHAREST

TO SECSTATE WASHDC PRIORITY 5162

C O N F I D E N T I A L SECTION 1 OF 2 BUCHAREST 5392

E.O. 11652: GDS

TAGS: PFOR EEWT RO

SUBJ: DRAFT LONG-TERM ECONOMIC AGREEMENT: EMBASSY COMMENTS

REF: STATE 217451

1. SUMMARY: WE ARE PLEASED WITH SCOPE AND DETAIL OF DRAFT LONG-TERM AGREEMENT. FROM OUR READING OF ROMANIAN-EC AGREEMENTS AND CSCE WE BELIEVE THERE ARE SEVERAL ADDITIONAL PROVISIONS THAT SHOULD BE CONSIDERED FOR INCLUSION. SINCE WE UNABLE TO OFFER GOR ANY OF ITS BASIC POLICY OBJECTIVES (CONTINUED MFN, PREFERENCES, CREDITS) THROUGH LONG-TERM AGREEMENT WE ANTICIPATE LENGTHY BARGAINING IN SEEKING TO SECURE GOR AGREEMENT TO OUR DRAFT TEXT. END SUMMARY.

2. WE HAVE COMPARED THE SEPT 11 INTERAGENCY DRAFT WITH SEVERAL EUROPEAN COMMUNITY LONG-TERM AGREEMENTS WITH ROMANIA (WEST GERMANY, NETHERLANDS AND UK) AND WITH OUR OWN AGREEMENT WIZI SOVIETS AND ARE IMPRESSED WITH THE MORE SUBSTANTIAL CONTENT OF OUR DRAFT. MUCH OF ARTICLE II, III AND PARA 1 OF THE ANNEX WOULD STRENGTHEN OUR BILATERAL RELATIONSHIP, A FUNCTION ALL THE MORE IMPORTANT SINCE THE BILATERAL TRADE AGREEMENT REMAINS VULNERABLE TO CONGRESSIONAL DISAPPROVAL EVERY YEAR. OUT FOLLOWING COMMENTS ARE BASED UPON THE ASSUMPTION THAT IT IS CONFIDENTIAL

PAGE 02 BUCAR 05392 01 OF 02 221401Z

DESIRABLE TO DESIGN THE LONG-TERM AGREEMENT AS A BASIS FOR OUR LONGER-RUN BILATERAL ECONOMIC RELATIONS.

3. A MAJOR QUESTION IS THE EXTENT TO WHICH WE SHOULD REPEAT

PROVISIONS OF OTHER AGREEMENTS AND JOINT DOCUMENTS IN THE LONG-TERM AGREEMENT, WHEN WE MIGHT REASONABLY EXPECT THEM TO BE RENEWED OR UPDATED BEFORE 1985. THE INTERAGENCY DRAFTING GROUP MAY HAVE RESOLVED THIS, BUT THE DISTINCTIONS MADE ARE NOT CLEAR TO US. WE FEEL SURE GOR WILL ASK WHY PROVISIONS SUCH AS THOSE DISCUSSED BELOW ARE TO BE ENSHRINED WITH 10-YEAR VALIDITY AND MANY OTHER PROVISIONS OF IMPORTANCE TO THE U.S. ARE NOT INCLUDED (E.G. FINANCIAL PROVISIONS OF THE TRADE AGREEMENT, ART VI, WHICH EMBASSY CONSIDERS A KEY SET OF PRINCIPLES FOR A LONGER-TERM ECONOMIC RELATIONSHIP, GIVEN GOR'S PROLIFERATING EXCHANGE RATES AND LOCAL CURRENCY PRACTICES).

A. ART III. 3. WE MAY BE ABLE TO AVOID THE ISSUE HERE BY SIMPLY DRAFTING EQUIVALENT PHRASES ON AGRICULTURAL INFORMATION INTO PARAS 1 AND 2 OF ART III AND LEAVING THE REFERENCE TO THE PROTOCOL TO THE PREAMBLE. APART FROM BUREAUCRATIC DISTINCTIONS ON BOTH SIDES, WE SEE NO REASON TO TREAT AGRICULTURAL INFORMATION AS IF IT WERE NOT ECONOMIC, COMMERCIAL OR STATISTICAL. TO MAKE THE POINT THAT IT IS ESSENTIAL TO GRAIN PURCHASES FROM US, WE COULD OF COURSE LEAVE IT AS IT IS FOR NOW, AND COMBINE IT WITH THE OTHER PROVISIONS AFTER DISCUSSING IT WITH GOR.

B. ART II.5. WE RECOGNIZE THAT ACCESS TO COURTS AND DENIAL OF IMMUNITY ARE PRINCIPLES OF FUNDAMENTAL INTEREST TO US. U.S. NEGOTIATORS WILL, HOWEVER, NEED A STRONG RATIONALE IN ORDER NOT TO DEPRECATE OTHER TRADE AGREEMENT PROVISIONS AND TO SHOW HOW THIS PROVISION BECOMES VITAL IF THE TRADE AGREEMENT IS NOT IN EFFECT. THE EMBASSY SEES LITTLE PRACTICAL VALUE IN ACCESS TO ROMANIAN COURTS HERE, IF GOR DOES NOT CHOOSE TO USE THEM, AND WE WONDER WHAT CLAIM TO IMMUNITY GOR COMMERCIAL ORGANIZATIONS MIGHT HAVE IN U.S. IN THE EVENT THE TRADE AGREEMENT BECOMES INOPERATIVE.

C. ANNEX PARA 3. THE APPLICATION OF BUSINESS FACILITATION PROVISIONS TO JOINT COMPANIES IS A USEFUL EXTENSION OF THE TRADE AGREEMENT. BUT THE DRAFT DOES NOT APPEAR TO ALLOW FOR THE DIFFERENCE BETWEEN THE CONTRACTUAL RELATIONSHIP ESTABLISHED CONFIDENTIAL

PAGE 03 BUCHAR 05392 01 OF 02 221401Z

IN A JOINT COMPANY AND THE MORE VULNERABLE STATUS OF A COMMERCIAL OFFICE USED TO PROMOTE BUSINESS IN COMPETITION WITH OTHERS. THE PROVISIONS OF THE LONG-TERM DRAFT ARE NOT DETAILED ENOUGH TO PROVIDE A SUBSTITUTE FOR CONTRACTUAL PROVISIONS--WHICH MUST AS A MINIMUM DESIGNATE WHO WILL BE RESPONSIBLE WITHIN GOR FOR PROVIDING EACH SERVICE OR GUARANTEE. SIMILARLY, "GOOD OFFICES" FOR HOUSING AND BROAD PROVISIONS REGARDING IMPORTS, LABOR AND TRAVEL DO NOT GO FAR ENOUGH TO MEET THE DAY-TO-DAY NEEDS OF A JOINT VENTURE HERE. YET WE RECOGNIZE THAT IN THE U.S. WE WILL RELY ON THE MARKET AND NON MORE LIBERAL LAWS TO MEET JOINT VENTURE NEEDS AND CANNOT ASK USDOC TO PROVIDE ALL THESE NEEDS DIRECTLY. WE PROPOSE, INSTEAD, A GENERAL PARA 3 WHICH MIGHT ONLY SAY QUOTE THE PARTIES WILL FACILITATE THE ESTABLISHMENT

AND FUNCTIONING OF JOINT COMPANIES TO AN EXTENT NOT LESS THAN THAT GRANTED REPRESENTATIONAL OFFICES UNDER THE PROVISIONS OF ANNEX 2 OF THE AGREEMENT ON TRADE RELATIONS OF APRIL 2, 1975, BETWEEN THE TWO COUNTRIES UNQUOTE.

D. WE PRESUME THE END OF PARA 3.B WAS INTENDED TO READ "OPERATION OF THE JOINT COMPANY," WITHOUT REFERENCES TO OFFICES OR REPRESENTATIONS.

4. ANOTHER ISSUE IS OUR GENERAL APPROACH TO BUSINESS FACILITATION. THE TRADE AGREEMENT'S MAIN WEAKNESS IN THIS AREA IS ITS EXTENSIVE COMMENTARY ON THE NEEDS OF REPRESENTATIONS (I.E. COMMERCIAL OFFICES) WHILE OMITTING REFERENCE TO OTHER FACETS OF OUR BUSINESS RELATIONS HERE--SOME OF THEM MORE IMPORTANT THAN THE HANDFUL OF US COMMERCIAL OFFICES. IN THE COMING YEARS WE EXPECT TO BE AT LEAST AS CONCERNED WITH THE STANDARDS OF TECHNICAL ASSISTANCE PERSONNEL (HERE UNDER LICENSING OR SERVICE CONTRACTS, SOME OF MANY YEARS' VALIDITY), MANUFACTURERS HANOVER TRUST BANK AND PERHAPS ADDITIONAL FINANCIAL INSTITUTIONS, PAN AMERICAN AIRLINES, AND ABOVE ALL BUSINESSMEN ON TEMPORARY VISITS. EACH OF THESE GROUPS HAS A DIFFERENT LEGAL BASIS THAN EITHER "REPRESENTATIONS" OR JOINT COMPANIES, WHILE IT IS REASONABLE THAT GOR'S GRADUAL ACCOMMODATION WITH WESTERN BUSINESS SHOULD HAVE RESULTED IN THE RATHER PATCHY APPLICATION OF DIFFERENT PRINCIPLES, EXCHANGE RATES, ETC., TO EACH OF THESE GROUPS, WE SHOULD STRIVE TO GAIN REASONABLY EQUAL TREATMENT FOR ALL OF COMPANIES OPERATING HERE. GOR IS UNLIKELY TO CHANGE ITS
CONFIDENTIAL

PAGE 04 BUCAR 05392 01 OF 02 221401Z

LAWYERS OVERNIGHT IN RESPONSE TO OUR DESIRE TO WRITE A TOUGH LONG-TERM AGREEMENT. WE THEREFORE NEED TO USE LANGUAGE THROUGHOUT THE AGREEMENT THAT IS BROADLY APPLICABLE, PRESERVES AT MINIMUM PRESENT FACILITIES, AND OPENS THE WAY FOR FUTURE IMPROVEMENT.

5. WASHINGTON MAY WISH TO INCLUDE AN IDEA OR TWO FROM THE CSCE FINAL ACT IN THE LONG-TERM AGREEMENT, TO MAKE A BILATERAL COMMITMENT OUT OF THEM.

A. WE PARTICULARLY LIKED CSCE'S REFERENCE TO ACCELERATED NEGOTIATIONS. IT COULD LOGICALLY BE INTRODUCED AS A NEW ART II.2 (WITH PRESENT PARAGRAPHS RENUMBERED) AS FOLLOWS:, QUOTE THE PARTIES AGREE THAT ACCELERATED NEGOTIATIONS OF PROPOSALS FOR COOPERATION BY THEIR NATIONALS, FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS HELPS TO LOWER COSTS, TO THE BENEFIT OF BOTH COUNTRIES, AND TO MAINTAIN A FAVORABLE ATMOSPHERE FOR DISCUSSION OF NEW AREAS OF COOPERATION, PARTICULARLY FOR SMALL AND MEDIUM-

CONFIDENTIAL

PAGE 01 BUCAR 05392 02 OF 02 231300Z

41

ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 STR-04 AID-05 CIAE-00 COME-00

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FM AMEMBASSY BUCHARETS

TO SECSTATE WASHDC PRIORITY 5163

C O N F I D E N T I A L SECTION 2 OF 2 BUCHAREST 5392

SIZED FIRMS UNQUOTE.

B. WE WOULD ALSO LIKE TO GIVE MORE PRIMINENCE TO THE NEED FOR LEGAL AND ADMINISTRATIVE INFORMATION IN ARTICLE III. PERHAPS IT COULD BE DONE BY SUBSTITUTING IN ART III. 2. B AFTER "PROCEDURES" LANGUAGE SUCH AS QUOTE THOSE AFFECTING FOREIGN TRADE, TRANSFER OF TECHNOLOGY, AND THE OPERATION OF COOPERATIVE VENTURES, INCLUDING THOSE DETERMINING CURRENCY REGULATIONS AND EXCHANGE RATES UNQUOTE. THIS AREA IS NOW SO MURKEY AS TO MAKE IT HARD TO DETERMINE WHETHER OR NOT WE ARE RECEIVING MOST-FAVORED-NATION TREATMENT AS CALLED FOR UNDER THE TRADE AGREEMENT. BUT WE WONDER WHETHER USG CAN FULFILL THIS OBLIGATION IN THE US, JUDGING BY OUR MODEST RESPONSE TO GOR REQUESTS FOR LEGAL INFORMATION AFFECTING THEIR PROPOSED COAL MINING VENTURE WITH ISLAND CREEK. WITHOUT THE PROVISION, WE SUFFER MOST, SINCE WE HAVE NO PRIVATE RECOURSE TO INFORMATION HERE.

6. TWO ELEMENTS OF THE ROMANIAN-EC DRAFTS SEEM TO MERIT CONSIDERATION.

A. OUR DRAFT LACKS THE EC AGREEMENTS' REFERENCE TO THE CONTINUING VALIDITY OF CONTRACTS REGARDLESS OF THE CONTINUED VALIDITY OF THE LONG-TERM AGREEMENT. SIMILARLY, THEY PROVIDE THAT THE LONG-TERM AGREEMENT DOES NOT AFFECT OTHER BILATERAL CONFIDENTIAL

PAGE 02 BUCCHAR 05392 02 OF 02 231300Z

AGREEMENTS (SEE ARTICLEES 13 AND 14, FRG AGREEMENT). WE DO NOT KNOW WHETHER THESE PROVISIONS REPRESENT EC OR GOR INITIATIVE, OR WHETHER WASHINGTON HAS CONSIDERED THE USEFULNESS OF SUCH PROVISIONS AND DISCARDED THEM.

B. USE OF THE TERM "MARKET ACCESS" (ART 2 OF FRG AGREEMENT), WOULD APPEAR TO BE A USEFUL ADDITION TO OUR DRAFT.

7. NEITHER THE EC AGREEMENTS NOR OUR DRAFT REFERS TO ROMANIA'S STATUS AS A DEVELOPING COUNTRY, OTHER THAN THROUGH REFERENCE TO THE JOINT STATEMENT IN THE PREAMBLE IN OUR DRAFT, AND THROUGH EC REFERENCE TO THE ECONOMIC POTENTIAL AND NEEDS OF EACH COUNTRY (E.G. ARTICLE R, FRG AGREEMENT). WE SHOULD EXPECT GOR TO ASK US FOR IT, DESPITE PUBLISHED GOALS OF BECOMING A DEVELOPED COUNTRY BY 1990. ALTHOUGH WE WOULD NOT EXPECT ROMANIA TO HAVE CAUGHT UP WITH THE INDUSTRIALIZED WEST BY 1985, BY THEN ITS INDUSTRIAL PLANT IN CHEMICALS AND MACHINE BUILDING SHOULD MAKE IT A VERY UNUSUAL LDC, ONE WHICH MAY OR MAY NOT QUALIFY FOR TRADE PREFERENCES OR OTHER CONCESSIONS UNDER CONSIDERATION THEN. THE EC APPROACH APPEARS TO US TO BE MORE REALISTIC THAN OUR FORMULATION IN THE TRADE AGREEMENT (ART. I.3.) FOR PURPOSES OF A TEN-YEAR ACCORD. IN ANY CASE WE SHOULD EXPLORE POSSIBLE RESPONSES TO GOR INSISTENCE ON SOME ACKNOWLEDGEMENT OF THEIR LEVEL OF DEVELOPMENT.

8. THE PREAMBLE TO THE ANNEX SUGGESTS THAT IT IS INTENDED FOR APPLICATION TO JOINT COMPANIES ONLY. IF SO, ORGANIZATIONS REFERRED TO IN PARA 4 APPEAR TOO BROAD FOR THE ANNEX. ALTHOUGH WE WERE NOT PRESENT FOR COUNCIL MEETING, WE HAVE SOME DOUBTS ABOUT THE POTENTIAL USEFULNESS OF THIS PRE-ARBITRAL COMMISSION IN TRADE DISPUTES, AND WONDER WHETHER IT MAY NOT BE PREMATURE TO COMMIT OURSELVES TO RECOMMENDING IT OVER THE LONG TERM. WE WILL BE HAPPY TO TRY IT, AND IF IT DOES RESOLVE DISPUTES WE WILL OF COURSE RECOMMEND IT. IF IT DOES NOT WORK WE WILL HAVE INSERTED ANOTHER DEALY BETWEEN LOSSES TO ONE PARTY AND A RECKONING BEFORE A BINDING ARBITRATION PROCEEDING. WHILE WE ARE NOT AS PESSIMISTIC AS VIENNA 8013 PARA 5 AND 6, WE BELIEVE THE CONCILIATION COMMISSION SHOULD BE TRIED BEFORE IT IS BUILT INTO A BILATERAL AGREEMENT.

9. THE DEPARTMENT SHOULD ANTICIPATE THE SAME GOR OPPOSITION TO REFERENCE TO NATIONALS IN THE FORMULA "NATIONALS, FIRMS, CONFIDENTIAL

PAGE 03 BUCAR 05392 02 OF 02 231300Z

ETC". USED IN PREAMBLE, ARTS. I, II, III AND ANNEX, WHICH WE ENCOUNTERED IN NEGOTIATING TRADE AGREEMENT. ON THAT OCCASION THE IDEOLOGICAL GAP WAS BRIDGED BY MENTIONING NATIONALS ONLY WHEN INDIVIDUAL AS OPPOSED TO BUSINESS CONCERNS WERE INVOLVED. NEEDS OF ONE-MAN BUSINESSES WERE COVERED BY DEFINING THE FORMULA "FIRMS, ETC". TO INCLUDE SOLE PROPRIETORSHIPS.

10. WE HAVE MENTIONED THIS DRAFT TO CDC PERSONNEL AND EC COUNSELOR WILL PURSUE WITH CDC PERSONNEL IN MINNEAPOLIS. WE HAVE ALSO DISCUSSED IT WITH MANUFACTURERS HANOVER TRUST HERE AND LOCAL REPRESENTATIVE HAS REQUESTED NEW YORK REPRESENTATIVES TO EXPEDITE THEIR COMMENT. WASHINGTON SHOULD DEFINITELY CONTACT ISLAND CREEK, PERHAPS TO TALK TO ALLEN, WHO WAS HERE FOR NEGOTIATION OF FRAME-WORK CONTRACT IN JUNE. SINCE THE PROPOSED \$50 MILLION ROMANIAN INVESTMENT IN US COAL MINING (NOT COUNTING ISLAND CREEK'S SHARE) IS SO MUCH LARGER THAN ANYTHING PLANNED BY US COMPANIES HERE, AN EXAMINATION OF DOMESTIC US NEEDS APPEARS TO US TO BE UNUSUALLY

IMPORTANT.

11. SOME LESSER DRAFTING SUGGESTIONS:

A. ART. I LAST PARA SOUNDS MORE GENERAL THAN THE PRECEDING PARAS, AND THUS MIGHT BETTER SERVE AS A FIRST PARAGRAPH.

B. ART. I, FIRST SENTENCE: WOULD NOT "UNDERTAKE" BE MORE APPROPRIATE FOR US THAN QUOTE USE THEIR GOOD OFFICES UNQUOTE?

C. ART. II, PARA 1A, MIGHT BE MADE MORE SPECIFIC BY BEGINNING WITH QUOTE THE ESTABLISHMENT OF UNQUOTE BEFORE QUOTE JOINT PARTICIPATION UNQUOTE.

D. ART. II, PARA 1A. THE FIELDS MENTIONED SEEM TO OVERLAP. DO WE NEED BOTH RAW MATERIALS AND NATURAL RESOURCES? WE ALSO WONDER WHY CONSUMER GOODS ARE SINGLED OUT AMONG FINISHED PRODUCTS, ESPECIALLY SINCE THEIR PRODUCTION WOULD APPEAR TO FALL UNDER INDUSTRY OR AGRICULTURE.

E. ART. II, PARA 1D. THE DECISION TO IMPORT FEW CONSUMER GOODS IS BASIC TO GOR'S DEVELOPMENT STRATEGY. WE FIND IT HARD TO IMPAGINE THAT US WOULD USE THIS AGREEMENT AS LEVERAGE TO CONFIDENTIAL

PAGE 04 BUCAR 05392 02 OF 02 231300Z

INTERFERE WITH IT. WHILE GOR MAY ACCEPT THIS LANGUAGE, AS IT DID IN ART. II PARA 1 OF THE TRADE AGREEMENT, WE WONDER WHETHER WE SHOULD MENTION PURCHASE OF CONSUMER GOODS SPECIFICALLY IN THE CONCEPT IS TO REMAIN AN EMPTY ONE.

F. ANNEX, PARA 2B. PURCHASING FOR QUOTE COMMERCIAL CONSIDERATIONS UNQUOTE IMPLIES HERE THE EXCLUSION OF TECHNICAL AND PERHAPS EVEN FINALCIAL CONSIDERATIONS. LOOKING FORWARD TO EFFECTIVE TRANSLATION, WE SHOULD ADD AT LEAST QUOTE AND TECHNICAL UNQUOTE, SINCE THE NATURAL TENDENCY HERE WOULD BE TO INTRODUCE SUBSTANDARD LOCAL PRODUCTS WHICH MIGHT WELL BE CHEAPER. NOTE: WE SHOULD EXPECT RESULTS FROM THIS PROVISION ONLY IN THE US OR THIRD COUNTRIES, SINCE MAJORITY OWNERSHIP AND MANAGEMENT CONTROL IN ROMANIA IS BY GOR. ON THE OTHER HAND, THIS HAS NOT BEEN A PROBLEM FOR ROM CONTROL DATA, WHICH IS CURRENTLY INCREASING THE LOCAL CONTENT OF ITS PRODUCTS.

12. THE DRAFT AGREEMENT, NOT TO MENTION THE ADDITIONS PROPOSED ABOVE, CONTAINS A SUBSTANTIAL NUMBER OF POINTS IN OUR FAVOR, WITH RATHER LITTLE (OTHER THAN THE FACT OF AN AGREEMENT) TO OFFER THE GOR IN RETURN. WE WOULD REAFFIRM OUR ACCEPTANCE AT THIS STAGE OF ROMANIA'S LDC STATUS. SINCE CONCESSIONS ON MAJOR QUESTIONS OF INTEREST TO GOR HOWEVER--CONTINUING MFN, PREFERENCES, CREDITS-- ARE NOT APPROPRIATE FOR A LONG-TERM AGREEMENT, WE SHOULD NOT BE SURPRISED IF WE HAVE PILED ON MORE FREIGHT THAN THIS VEHICLE CAN CARRY. ALTHOUGH WE CAN

AND SHOULD ARGUE THAT THE DRAFT PROVISIONS WILL MAKE COOPERATION
MORE LIKELY AND MORE EFFECTIVE, WE SHOULD ALSO EXPECT THE NEGOT-
IATIONS TO BE STRETCHED OUT, ESPECIALLY IF WE WANT TO KEEP
MOST OF THE DRAFT.
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